

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

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Advanced Television Systems  
and Their Impact upon the  
Existing Television Broadcast  
Service

MM Docket No. 87-268

To: The Commission

**COMMENTS OF UNIVISION COMMUNICATIONS, INC.**

Univision Communications, Inc. ("UCI"), by its attorneys, hereby submits its comments on the Commission's Sixth Further Notice of Proposed Rule Making in the above-referenced proceeding.<sup>1/</sup> UCI owns and operates the Univision Network, which has 39 television affiliates nationwide, 20 of which are full-power television stations. Through its subsidiary, Univision Television Group, Inc. ("UTGI"), UCI is the licensee of eleven full-power and seven low-power Spanish-language television stations.<sup>2/</sup> The Univision Network is the primary source of news and entertainment for this nation's Hispanic population. This audience is expanding rapidly, as Hispanics are the fastest growing segment of the U.S. population. According to current census projections, the U.S. Hispanic population is expected to increase 52% by the end of the next

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<sup>1/</sup> Sixth Further Notice of Proposed Rule Making, Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, MM Docket No. 87-268 (released August 14, 1996).

<sup>2/</sup> UCI's full-power stations include KLUZ-TV, Albuquerque, NM; KUVN, Garland, TX; KFTV, Hanford, CA; WGBO-TV, Joliet, IL; KMEX-TV, Los Angeles, CA; WLTV, Miami, FL; WXTV, Paterson, NJ; KTVW-TV, Phoenix, AZ; KXLN-TV, Rosenberg, TX; KWEX-TV, San Antonio, TX; and KDTV, San Francisco, CA. Univision's LPTV stations include K48AM, Albuquerque, NM; K30CE, Austin, TX; KABE-LP, Bakersfield, CA; KUVN-LP, Fort Worth, TX; W47AD, Hartford, CT; WXTV-LP, Philadelphia, PA; and K52AO, Tucson, AZ.

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decade, and by 258% by the year 2050.<sup>3/</sup> By 2050, the U.S. Hispanic population is expected to make up 24.5% of the overall population, up from its current 10.2 % share today.<sup>4/</sup> Given the explosive growth of this segment of the population, and its heavy reliance on Spanish-language programming, UCI urges the Commission to make special efforts in this and related proceedings to preserve this important broadcast service and protect the interests of its many viewers.

**I. IN CREATING ITS FINAL TABLE OF DTV ALLOTMENTS, THE COMMISSION SHOULD BE PARTICULARLY MINDFUL OF THE DISPROPORTIONATE IMPACT THAT THE TRANSITION TO DTV WILL HAVE ON MINORITY-ORIENTED BROADCASTERS SUCH AS UCI**

**A. DTV REPLICATION OF CURRENT NTSC CONTOURS SHOULD BE BASED ON AN UPDATED NTSC ENGINEERING DATABASE**

1. Like other television networks that came into being after ABC, CBS, and NBC, the Univision Network is composed mostly of middle to high UHF channel stations, many of which were not on the air prior to the 1980s. As the Commission has repeatedly recognized, UHF stations, as a matter of physics, are technically inferior to VHF stations. First, as mentioned in the Commission's recent notice of proposed rule making with regard to Broadcast Television National Ownership Rules,<sup>5/</sup> UHF signals cover far less area than VHF signals. UHF stations have a signal reach of only 44 miles, compared to the 72-76 miles of signal reach that a VHF station can attain.<sup>6/</sup> A UHF station also generally requires ten times more power than a

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<sup>3/</sup> Statistical Abstract of the United States: 1996 (116th ed.), U.S. Bureau of the Census, p. 19.

<sup>4/</sup> The Tampa Tribune, Hispanic Population on the Rise, March 15, 1996 (citing Population Projections of the United States by Age, Sex, Race, and Hispanic Origin: 1995-2050, U.S. Bureau of the Census (1996)); Los Angeles Times, Latinos, Asians to Lead Rise in U.S. Population, March 14, 1996 (citing same report from U.S. Bureau of the Census).

<sup>5/</sup> FCC 96-437 (released Nov. 7, 1996).

<sup>6/</sup> Id. at 5 (citing Comments of the Association for Local Television Stations).

VHF station to broadcast its strongest signal.<sup>7/</sup> Moreover, because advertisers have until recently largely ignored Hispanic viewers, most of these Spanish-language stations were built and operated on shoestring budgets, and were therefore forced to broadcast at far less than maximum UHF facilities. As a result, they have been at a severe technical disadvantage against not only VHF stations, but against many other UHF stations as well. Consequently, the gap in coverage between network affiliated VHF stations and minority-oriented UHF stations has long been substantial. While UCI does not suggest that the Commission use the DTV allotment process as a mechanism to achieve service parity among broadcasters, UCI urges the Commission to do all it can to prevent the process from being used against minority-oriented broadcasters like UCI by forever locking them into second-class facilities with inferior signal contours.

2. When UCI acquired its original group of nine full-power stations in December, 1992, most were operating with far less than optimal facilities. After acquiring these and an additional two full-power stations, extensive efforts were made to modernize the stations and improve their service to the public. At the conclusion of this initial process, UCI's eleven stations had achieved sufficient financial health to fund the construction of upgraded facilities with greatly enhanced geographic coverage. UCI's licensee corporation, UTGI, began a concerted effort to increase the coverage of its stations, culminating in the filing of six modification applications, one of which was filed in 1994, and five of which were filed between January 30, 1996 and July 1, 1996. Of these last five applications, only one has been processed to grant, and that grant was made conditional on the outcome of the DTV proceeding.<sup>8/</sup>

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<sup>7/</sup> Id.

<sup>8/</sup> The Commission has granted the modification application for KWEX-TV, San Antonio, Texas (see FCC File No. BPCT-960130KF). The applications still pending were filed for KDTV, San Francisco, CA (see FCC File No. BPCT-960201KE), KLUZ-TV,

Moreover, that single grant did not occur until August 2, 1996, and as a result, the DTV facilities specified for that station in the Commission's proposed DTV allotment table do not reflect the station's currently authorized NTSC coverage area.

3. UCI agrees with the Commission's proposal to allot DTV channels to existing broadcasters so as to achieve replication of NTSC service areas, but is concerned that the actual process being utilized by the Commission will not accomplish that goal. First, if the Commission continues to utilize the May 13, 1996 engineering database as the standard against which service replication will be measured, UCI will not receive digital replication of any of the NTSC contours for which it has applied since 1994, even though all of these applications were filed prior to the Commission's adoption of the Sixth Further Notice of Proposed Rule Making. Thus, the UCI stations may well find themselves permanently locked into inferior digital allotments that do not coincide with their NTSC contours and greatly limit their ability to serve the nation's Hispanic audience.

4. Second, despite the fact that all of UCI's pending modification applications were filed well before the Commission released its Sixth Further Notice of Proposed Rule Making stating that future modification authorizations would be made conditional on the outcome of the DTV proceeding,<sup>2/</sup> the Commission has nonetheless attached that condition to the single UCI modification grant issued so far, and presumably will be attaching it to the eventual grants of the other modification applications. As a result, UCI could well find even its enhanced NTSC

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<sup>8/</sup> (...continued)  
Albuquerque, NM (see FCC File No. BPCT-960624KE), KXLN-TV, Rosenberg, TX (see FCC File No. BPCT-960628KX), and KFTV, Hanford, CA (see FCC File No. BPCT-0701KI). The sixth application, a modification application for WLTU, Miami, FL (see FCC File No. BPCT-940922KH), was granted in 1995.

<sup>2/</sup> Sixth Further Notice of Proposed Rule Making, at 26-27.

coverage endangered by the DTV allotment process, thereby harming UCI's ability to serve many Hispanic households.

5. In short, by delaying the processing of pending modification applications and then retroactively applying newly announced conditions on the resulting authorizations, the Commission has unintentionally damaged UCI's ability to provide Spanish language programming in both the NTSC and DTV formats. The enormous strides UCI has made to enhance its signal coverage, only recently possible, could well be mooted in the DTV transition unless the Commission takes action to ensure that this will not be the case. Given the relatively few Spanish-language television broadcast outlets available to a rapidly growing Hispanic population, such an arbitrary result is not in the public interest and certainly is not what the Commission intended in clearing the way for DTV.

6. The solution to this problem is relatively straightforward. When the time comes for the Commission to adopt a final DTV table of allotments, the standard for service replication should be the station contours included in the then-current engineering database, including those contours contained in any applications filed before release of the Commission's Sixth Further Notice of Proposed Rule Making. In establishing its table of DTV allotments, the Commission should also fully protect all modified NTSC contours for which applications were filed prior to release of the Sixth Further Notice of Proposed Rule Making.

**B. WHERE TECHNICALLY FEASIBLE, A PAIRED DTV CHANNEL SHOULD ALSO BE MADE AVAILABLE TO ALL NEW NTSC STATIONS**

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7. In its efforts to increase Spanish-language television service in smaller communities, UCI recently filed applications for three new television stations in response to Commission-announced filing windows. While UCI recognizes that in some particularly congested markets, there may simply be no DTV channels available to provide a successful

NTSC applicant with a paired DTV channel, the communities for which the Commission has recently sought new station applications (prior to imposition of the filing freeze), are predominantly smaller towns in rural areas where spectrum congestion is not a problem.

8. Because it is in the public interest to provide service to these smaller communities both now and in the digital future, and because encouraging such local service is an important part of the Commission's mandate under Section 307(b) of the Communications Act, UCI urges the Commission to provide a paired DTV channel to successful NTSC applicants whenever the allotment of such a channel is technically feasible. This will ensure continued service to these smaller communities after the transition to digital television is complete. It will also remove a tremendous disincentive that might prevent successful applicants from building their NTSC stations, as such applicants might be either unwilling or unable to finance the construction of an NTSC station knowing that it will be forced from the air in a few short years with no prospect of being allowed to participate in the transition to DTV. UCI therefore urges that the Commission make it standard policy to award a paired DTV channel to all successful applicants for a new NTSC station in order to ensure increased television broadcast service to the public both during and after the transition. Because the Commission has now imposed a freeze on the filing of any such NTSC applications in the future, and has proposed to eliminate vacant NTSC allotments, the disruption caused by such a policy would be minimal and the public benefits great.

**C. THE COMMISSION SHOULD PRESERVE EXISTING LPTV SERVICE**

9. The third way in which the Commission's current DTV proposal will have a disproportionate impact on minority programmers like UCI is through the elimination of many existing LPTV stations. Because of the lower cost of building and operating LPTV stations, as well as the fact that they were the only option available to minority programmers in many markets when sufficient minority audiences became available to support minority-oriented

broadcasting, a disproportionately high percentage of minority programming is carried on LPTV stations. As stated above, UCI currently owns seven LPTV stations which broadcast Spanish-language programming, including one in Philadelphia.<sup>10/</sup> These stations provide a vital service to Hispanic viewers that will be sorely missed if they are forced off the air. For example, UCI's LPTV station in Bakersfield, California, KABE-LP, ties as the most watched television station among adults 18-34 in the entire Bakersfield DMA, and its local newscast is the top-rated newscast in the market among adults 18-49.<sup>11/</sup>

10. In its Sixth Further Notice of Proposed Rule Making, the Commission stated that it was likely that 35 to 45 percent of existing LPTV operations would be forced off the air during the DTV transition period, with LPTV operations in or near major TV markets being particularly affected. Id. at 28. Because minority audiences are disproportionately concentrated in or near large cities, the LPTV stations most likely to be forced from the airwaves in the DTV transition are those which serve minority audiences. Moreover, the Commission's estimate of the loss in LPTV service does not even take into account the effects of the Commission's spectrum recovery proposals. For example, according to the Sixth Further Notice of Proposed Rule Making, the proposed recovery of channels 60-69 will eliminate an additional 17% of all LPTV stations and TV translators. Id. Thus, even if LPTV stations are allowed to continue to use spectrum outside of the Commission's proposed core channels during the transition period, well over 50% of LPTV stations will soon be forced from the air, with many of these stations being near urbanized areas with large minority populations.

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<sup>10/</sup> UCI's LPTV stations include WXTV-LP, Philadelphia, PA; KUVN-LP, Fort Worth, TX; W47AD, Hartford, CT; K52AO, Tucson, AZ; K30CE, Austin, TX; K48AM, Albuquerque, NM; and KABE-LP, Bakersfield, CA.

<sup>11/</sup> May 1996 Nielsen Station Index for the Bakersfield DMA.

11. While it is inevitable that the need for DTV channels will force some LPTV stations off the air, the harm will be greatly intensified if the Commission adheres to its proposal to ultimately limit the broadcast spectrum to only the “core” channels of 7 through 51. The lack of available channels in such a limited amount of spectrum will not only force many LPTV stations off the air to make way for full-power DTV operations, but will also make it unlikely that any DTV channels will ever become available that would allow minority programmers to make the transition to digital with their LPTV stations.

12. In the Sixth Further Notice of Proposed Rule Making, the Commission did offer a number of proposals for safeguarding the interests of LPTV broadcasters. For example, pertaining to the period during the transition, the Commission proposed to permit any displaced LPTV station to apply for a replacement channel in the same area without being subject to competing applications. Id. at 29. The Commission also asked if, once DTV channels have been allotted to full-power television broadcasters, licensed LPTV stations should be afforded a window of opportunity to seek “primary” use of DTV channels, ahead of other new broadcast entrants. Id. at 31. While UCI supports these proposals and commends the Commission for seeking to preserve the public benefits of the LPTV service, proposals such as these will have little impact if an artificial contraction of the available broadcast spectrum leaves no digital or displacement channels available for use by LPTV licensees. UCI believes that the Commission has made several meritorious proposals, but that they will be of little use unless the Commission retains its current broadcast spectrum and rejects the notion of a “core” spectrum for broadcasting. Such an approach is necessary to promote the continued availability of diverse programming and to protect the interests of minority viewers. UCI therefore strongly urges the Commission to preserve the existing broadcast spectrum.



**II. THE COMMISSION SHOULD ALLOW FUTURE MODIFICATIONS TO DTV FACILITIES AND ALLOTMENTS WHERE SUCH MODIFICATIONS WOULD ALLOW THE LICENSEE TO IMPROVE ITS SERVICE WITHOUT CREATING OBJECTIONABLE INTERFERENCE**

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13. While service replication should be the goal of the initial DTV allotment process, UCI agrees with the Commission's proposal to establish specifications for maximum DTV facilities,<sup>12/</sup> and urges the creation of a DTV modification procedure whereby licensees could seek to maximize their facilities so long as no objectionable interference to other stations is created. Such a procedure would not only allow licensees to provide greater levels of service to a larger portion of the public, but would also enable stations to individually address any as yet unknown propagation peculiarities of the DTV signal. Allowing such modifications would also hopefully prevent stations from being artificially locked into a certain coverage area merely because their predecessor NTSC stations had not been operated at maximum facilities. While UCI does not object to the Commission's specific power and antenna height proposals for maximum facilities, the Commission should remain flexible on this issue in case adjustments are eventually needed once DTV signal propagation is evaluated in real world conditions.

**CONCLUSION**

UCI believes that digital television technology will ultimately offer great benefits to its audience and to the public in general. It is important, however, that the Commission preserve the many excellent aspects of the existing broadcasting system, including its ability to maximize program availability for all portions of the viewing public. UCI therefore urges the Commission to (1) fully protect the NTSC contours resulting from any modification application filed before release of the Sixth Further Notice of Proposed Rule Making and replicate those modified contours in making DTV allotments; (2) provide a paired DTV channel to all new NTSC stations

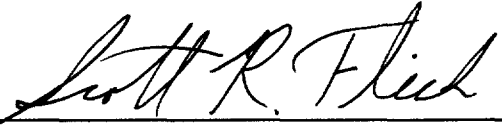
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<sup>12/</sup> Sixth Further Notice of Proposed Rule Making, at 40-41.

where it is technically feasible; (3) reject the notion of a core spectrum and retain sufficient broadcast spectrum to preserve the significant quantities of minority programming available nationwide via LPTV stations; and (4) allow stations to ultimately maximize their DTV facilities where no objectionable interference would result.

Respectfully Submitted,

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